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OFFICE OF PETITIONS

In re Application of :
Adler, et al. : DECISION ON PETITION
Application No. 10/724,223 :
Filed: December 1, 2003 :
Docket No.: 67824.407222 :

This is a decision on the petition under 37 CFR 1.181, filed April 9, 2008, to withdraw the holding of abandonment.

The petition is **GRANTED**.

The application was held abandoned for failure to timely submit a properly reply to the Notice of Non-Compliant Amendment (Notice) mailed July 27, 2007. The Notice set a one month shortened statutory period of time for reply. Notice of Abandonment was mailed March 17, 2008.

Petitioners assert non-receipt of the Notice.

The showing required to establish nonreceipt of an Office communication must include a statement from the practitioner describing the system used for recording an Office action received at the correspondence address of record with the USPTO. The statement should establish that the docketing system is sufficiently reliable. It is expected that the record would include, but not be limited to, the application number, attorney docket number, the mail date of the Office action and the due date for the response. Practitioner must state that the Office action was not received at the correspondence address of record, and that a search of the practitioner's record(s), including any file jacket or the equivalent, and the application contents, indicates that the Office action was not received. A copy of the record(s) used by the practitioner where the non-received Office action would have been entered had it been received is required. A copy of the practitioner's record(s) required to show non-receipt of the Office action should include the master docket for the firm. That is, if a three month period for reply was set in the nonreceived Office


action, a copy of the master docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted as documentary proof of nonreceipt of the Office action. If no such master docket exists, the practitioner should so state and provide other evidence such as, but not limited to, the following: the application file jacket; incoming mail log; calendar; reminder system; or the individual docket record for the application in question. The showing outlined above may not be sufficient if there are circumstances that point to a conclusion that the Office action may have been lost after receipt rather than a conclusion that the Office action was lost in the mail (e.g., if the practitioner has a history of not receiving Office actions). The arguments and supporting documentation presented have been carefully considered. Moreover, petitioners have included a copy of a docket report covering the time period that a response would have been due had it been received. In view thereof, the evidence presented support the conclusion that the non-final Office action was not received. See, MPEP 711.03(c).

The petition and supporting documentation have been carefully reviewed and support a conclusion that the Notice, while properly mailed by the USPTO, was not received applicants.

In view thereof the Notice of Abandonment is hereby VACATED and the holding of abandonment is WITHDRAWN.

The application file is being forwarded to Group Art Unit 1649 for re-mailing of the Notice. The due date for reply will be set in the newly mailed non-final Office action.

Telephone inquiries concerning this matter may be directed to the undersigned at 571-272-3205.



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Office of Petitions